

## DECLARATION UNDER 37 C.F.R. § 2.41

Dear Commissioner:

I, Richard VanBrimmer, declare that:

I am Richard VanBrimmer, Assistant Vice President, Business Advancement, Affinity & Trademark Management at The Ohio State University (“Ohio State”), the Applicant for U.S. Application No. 88/571,984 for the mark THE for use in connection with clothing apparel in Class 25:

I have been employed in the Office of Trademark and Licensing Services at The Ohio State University for the past 30 years. My responsibilities as Assistant Vice President, Business Advancement, Affinity & Trademark Management at Ohio State include maintaining an awareness of the trademarks and trade dress (“Ohio State Marks”) used by Ohio State, the public recognition of Ohio State Marks, and their commercial value; negotiating licenses for the use by others of Ohio State Marks; monitoring compliance with Ohio State’s trademark licenses; investigating reports of unauthorized use of Ohio State Marks; and enforcing Ohio State’s rights in the Ohio State Marks.

Based on the following evidence, my first-hand knowledge and an examination of records and other items located at Ohio State’s offices and archives, I believe that the Applied-for Mark, namely THE, serves as a secondary source and functions as an indicator of source and sponsorship:

1. Ohio State’s predecessor in interest, known as Ohio Agricultural & Mechanical (“Ohio A&M”) was founded in 1870 under the Morrill Act. As reported by Ohio State’s Archives Department, the name “Ohio A&M” was thought by some to be inadequate for representing the institution that was the only beneficiary of the land grant act in Ohio. Then President Edward Orton was insistent that a new name

would separate the institution from other colleges in Ohio. The name of Ohio A&M was thereafter changed to “The Ohio State University” by the Board of Trustees. Legend has it that “The” (as opposed to the addition of “An” or leaving it as “Ohio State University”) was used to show the other colleges which institution was supposed to be the leader in the state. **See Exhibit A.**

2. Ohio State has developed into one of the most well-respected institutions of higher learning in the country. For 150 years, Ohio State has provided college level educational courses, sponsored collegiate sporting events and recreation programs, and staged dramatic and musical entertainment events, and provided cutting edge research in many fields including but not limited to medicine, life sciences, arts, agriculture, and engineering. Ohio State’s undergraduate program and graduate programs for law, medicine, business, engineering, and education are all currently ranked among the top 40 schools in the nation in their respective areas by U.S. News & World Report.
3. Ohio State is a member of the Big Ten athletic conference and the National Collegiate Athletic Association (“NCAA”). Its athletic teams, known as the “Buckeyes,” enjoy a long and proud tradition of excellence in interscholastic athletic competition, and an enthusiastic and loyal following.
4. This enthusiasm and loyalty to Ohio State has traditionally been at its peak during the Ohio State Buckeyes football season each fall and winter (although this enthusiasm and loyalty remains strong for all Ohio State Buckeyes athletic programs throughout the year). On average, well over 100,000 people attend each Ohio State home football game at Ohio Stadium and approximately 16,000 people

attend each Ohio State home men's basketball game at the Schottenstein Center. For many years, the demand for tickets to these games has exceeded the available supply.

5. The Big Ten Conference currently includes fourteen (14) universities that reside throughout eleven (11) states stretching across the Midwest, East, and Mid-Atlantic, namely New Jersey, Maryland, Pennsylvania, Ohio, Michigan, Indiana, Illinois, Iowa, Nebraska, Minnesota and Wisconsin. These schools have storied athletic programs with most having storied football and/or basketball programs.
6. Ohio State owns numerous trademarks for its names, logos, and slogans used in connection with Ohio State and its athletic teams, including the "Block O" design, THE OHIO STATE UNIVERSITY, BUCKEYES, OSU, O-H-I-O, BRUTUS (the name of Ohio State's beloved school mascot), as well as trade dress for its colors and logos, including in connection with its football uniforms (collectively "Ohio State Marks").
7. Ohio State has a long tradition of academic excellence and its reputation is nationally known. Over 60,000 students were enrolled at Ohio State for the 2019 Autumn Semester. Many students are proud of their association with Ohio State and many demonstrate this pride by wearing apparel bearing one or more of the Ohio State Marks and/or displaying other articles bearing the Ohio State Marks and/or purchasing items bearing the Ohio State Marks for family members, friends, and others.
8. Ohio State has 550,000 living alumni. Many Ohio State alumni are proud of their attendance at and affiliation with Ohio State and many demonstrate this pride by

wearing apparel bearing one or more of the Ohio State Marks and/or displaying other articles bearing the Ohio State Marks and/or purchasing items bearing the Ohio State Marks for family members, friends, and business associates.

9. Ohio State licenses and markets many items bearing the Ohio State Marks that have come to symbolize the goodwill and reputation of Ohio State and its services. Some of these trademarks were created out of targeted marketing campaigns or otherwise; others were borne organically and from the culture of Applicant's students, athletes, and alumni that make up the membership of Ohio State. While trademarks like THE OHIO STATE UNIVERSITY fit this former category, the Applied-for Mark, namely THE, fits this latter category.
10. Ohio State is among only five universities with NCAA championships in baseball, basketball and football, and has also won national championships in men's swimming and diving, men's outdoor track and field, men's golf, men's gymnastics, men's fencing, co-ed fencing, synchronized swimming, and men's volleyball. Ohio State's athletic teams receive substantial coverage by local, regional and national media, including the national broadcast of certain Buckeye football games. The Ohio State football team has won the National Championship in football eight (8) times, with its latest championship in 2014, and Ohio State's appearance in national championship and major bowl games is viewed by tens of millions each year in widely viewed, nationally televised games. The Ohio State football team has won ten (10) Big Ten Football Championships in the last twenty (20) years. The Ohio State basketball team has enjoyed fourteen twenty-win seasons in the last fifteen years.

11. These successes have cemented the presence of the Ohio State Marks on a national stage—making goods bearing the Ohio State Marks even more sought after and desired. Indeed, Ohio State’s licensing revenues are consistently in the millions each year and continue to soar, averaging over \$12.5 million a year over the last 10 years (including over \$15.5 million dollars in (fiscal year 2019). Many fans and other supporters of Ohio State’s athletic teams, and particularly many of those fortunate enough to attend these games in person, demonstrate their support for the Buckeyes by wearing apparel bearing one or more of the Ohio State Marks and/or purchasing items bearing Ohio State Marks for family members, friends, and business associates. Indeed, from 2002 to date, Ohio State has earned over \$181 million in royalties from licensing Ohio State Marks— money that is then reinvested into the university and its numerous missives, including but not limited to student scholarships, libraries, teaching, research, and athletics.
12. Today, the Applied-for Mark, namely THE, is shorthand for The Ohio State University. This is because, over time, the term “THE” in The Ohio State University began to be prominently emphasized when spoken.
13. While I have been unable to pinpoint the exact date when “The Ohio State University” began to be pronounced with a prominent and elongated emphasis on *THE* (pronounced with a long “ee” vowel, rather than a short “uh”), the following origins have been credited: when former Ohio State football player Robert Smith announced on Monday Night NFL Football that he was from “*THE* Ohio State University” (1994); when former President Gordon Gee who, in his speech to the graduating class of 1992, encouraged those graduates to go out and “let them know

that you graduated from *THE* Ohio State University”; or when Ohio State decided to move its branding away from being known solely as “OSU” (1980’s). *See Exhibit B.*

14. Regardless of the date of its origin, the emphasis on THE became a permanent part of Ohio State’s culture amongst students and fans by the turn of the century. Due to demand by the students, athletes, and fans, Ohio State began to license the Applied-for Mark, namely THE, as a standalone item on apparel and other products at least as early as 2005. The demand is predicated by the fact that THE has become shorthand for The Ohio State University and its academic missives and athletic services.
15. Further evidence of the Applied-for Mark, namely THE, serving as a secondary source indicator is found outside of Applicant’s own history and archives, as there are numerous unsolicited articles, blogs, posts, and comments that recognize the Applied-for Mark as having secondary source indication or sponsorship. *See Exhibit C.*
16. I have firsthand knowledge that the Ohio State Marks, including the Applied-for Mark, namely THE, that appear on collegiate merchandise such as hats and shirts, serves as an indication of secondary source; it refers to or identifies The Ohio State University or the Ohio State Buckeyes athletic team; that the decision to purchase apparel bearing the Ohio State Marks – including THE – arises from the purchaser’s desire to demonstrate his or her connection to, affinity for, or affiliation with the secondary source, namely The Ohio State University. Indeed, this is one of the prevailing reasons why the sale of counterfeit and otherwise unauthorized or

unlicensed goods is an enforcement issue for Ohio State, especially in and around the respective stadiums and arenas where home games are played, when the relevant purchasing public has a heightened sense of affinity for Ohio State and will be more likely to make purchases on impulse.

17. I also have firsthand knowledge that one of the objectives of seeking federal trademark protection for Ohio State Marks when used on licensed products, such as apparel – especially those Ohio State Marks that are popular amongst the students and fans of Ohio State – is so that Ohio State can avail itself to the legal remedies available to stem the tide of the itinerant nature of counterfeit goods.

I declare further that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true and further that these statements were made with the knowledge that willful false statements and the like are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of this application and any registration resulting therefrom.

The Ohio State University



Date: March 11, 2020

By: \_\_\_\_\_

Name: Richard VanBrimmer  
Title: Assistant Vice President, Business  
Advancement, Affinity & Trademark  
Management